



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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March 20, 2001

Robert Edelman  
29871 232<sup>nd</sup> Avenue SE  
Black Diamond, WA 98010

Re: Response to Your December 7, 2000 Rulemaking Petitions for Amendment to  
WAC 390-16-309 and Repeal of WAC 390-16-311

Dear Mr. Edelman:

The purpose of this letter is to confirm in writing that at its regular meeting on February 27, 2001 the Public Disclosure Commission unanimously adopted a motion to deny the December 7, 2000 Petitions for Rulemaking with respect to WAC 390-16-309 and 390-16-311, the rules implementing RCW 42.17.660.

The matter came before the Commissioners after the agency received your Petitions and staff filed a CR 101 (Preproposal Statement of Inquiry), which was published in the Washington State Register on January 24, 2001. This statement informed the public of your Petitions, as a first step in Commission consideration of whether to further initiate the formal rulemaking process.<sup>1</sup>

All the members voted in favor of the motion denying the Petitions. They concurred that their reasons to deny the Petitions are as described below.

The Commission found that:

- (a) there was an exhaustive several-month process in 1993-94, shortly after the initiative was adopted, with input from many affected groups, organizations, Commissioners, and Commission staff, in developing the two rules;
- (b) the rules explain vertical affiliation (also known as automatic or per se affiliation) and affiliation based on a factor test (sometimes referred to as horizontal affiliation);
- (c) the rules also serve as important guides to the agency with respect to implementing the statute;
- (d) the rules were developed with care; and

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<sup>1</sup> Notice of the agenda item was also given to the PDC's stakeholder group of persons and organizations who have expressed an interest in Commission rules and notice was also provided on the PDC's website.



(e) the agency had appropriately applied the rules in the LIUNA case (PDC No. 99-070), which you reference in your materials in support of your Petitions.

With respect to the arguments you raised in your Petitions, the Commission agreed with the following responses presented by Assistant Attorney General Nancy Krier, who represented PDC staff regarding this matter:

1. **YOUR ARGUMENT:** "RCW 42.17.660(2) requires controlled entity contributions to be attributed to a single entity." **RESPONSE:** The first sentence of RCW 42.17.660(2) requires that "[T]wo or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation or a local unit, branch, or affiliate of a trade association, labor union, or collective bargaining association." This type of structural relationship, or affiliation, has over the years been called "vertical affiliation." WAC 390-16-309(1) implements this part of the statute by clarifying which units of organizations are automatically affiliated for purposes of sharing one contribution limit. Since under RCW 42.17.660(2) and WAC 390-16-309(1) local units of an organization do not automatically share a limit, WAC 390-16-311 further implements RCW 42.17.660(2) by clarifying those circumstances under which local units would maintain their own separate limit or, conversely, share one contribution limit.

The second sentence of RCW 42.17.660(2) requires that "[A]ll contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a trade association, labor union, collective bargaining association, or the local unit of a trade association, labor union, or collective bargaining organization are considered made by the same person or entity." This "other" type of affiliation or relationship is implemented by the analysis of the financial/maintenance/control factors explained in WAC 360-16-309(3) and, among other applications, is used to determine when one local unit controls another local unit.

Both sentences of subsection (2) of the statute must be read and given meaning, and that is what these two rules do.

2. **YOUR ARGUMENT:** "WAC 390-16-311 amended the statute in an arbitrary and capricious manner by adding an exception to the single entity requirement with no statutory foundation." **RESPONSE:** There was no arbitrary and capricious action. The rule was developed with much thought and input from the public and does not create an exception to the statute. It merely implements the statute in a logical manner. Even if there is room for other opinions, that does not mean the Commission's interpretation is arbitrary and capricious. The courts have given great weight to the Commission's interpretation of chapter 42.17 RCW for those portions of the statute the Commission implements.

3. **YOUR ARGUMENT:** "Federal law governing similar federal provisions does not allow for each controlled entity to maintain a separate contribution limit." **RESPONSE:** Federal elections law, while considered during the Commission's rulemaking process, is not the same as state law, and does not preempt the state law or the Commission's interpretation of the state law at issue here.

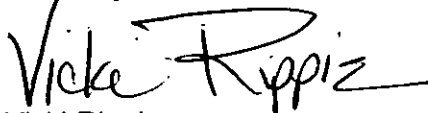
4. **YOUR ARGUMENT:** "WAC 390-16-311 grants exceptions to selected organizations without authority." **RESPONSE:** WAC 390-16-309 and 311 merely interpret and clarify the statutory language in a reasonable and logical manner. What you describe as an "exception" is nothing more than a practical application of the actual statutory language. Moreover, the "staying out" rule is consistent with other PDC statutes and rules in the scope of PDC regulation: with respect to elections and campaigns, the PDC does not regulate entities that do not engage in the election or campaign process.

5. **YOUR ARGUMENT:** "Large organizational contributors continue to have a disproportionate influence on elections because WAC 390-16-311 illegally permits multiple units to have separate contribution limits." **RESPONSE:** The Petitions seek to regulate in a manner that was ultimately not adopted as a reasonable interpretation of the statute by the Commission in 1994, and currently is not consistent with case law trends regarding limiting free speech rights and participation by organizations in the political process. If you nonetheless seek additional restrictions on large organizations that wish to participate in the political process, you should seek such authority from the Legislature.

In summary, the Commission found that the rules are authorized by RCW 42.17.660 and the Commission's authority to adopt rules at RCW 42.17.370. The regulations do not conflict with RCW 42.17.660; they interpret and thus implement state law. Therefore, the Commission will not be proceeding with rulemaking to amend WAC 390-16-309 or to repeal WAC 390-16-311. The Commission does not find that there are alternate means to address your concerns at the agency level.

The Commission has requested that I forward this letter to you on their behalf. A copy is being provided to those persons who testified at the meeting on this matter and one also will be posted on our website. Pursuant to RCW 34.05.330(3), you have 30 days from the date of this letter to appeal to the Governor. You may also petition for review by the joint administrative rules review committee under RCW 34.05.655. You may also seek judicial review under the procedures of RCW 34.05.510 - .598.

Sincerely,



Vicki Rippie  
Executive Director

cc: Members, Public Disclosure Commission  
Jami Lund, Evergreen Freedom Foundation  
James Oswald, Song, Oswald & Mondress  
Nancy Krier, Assistant Attorney General  
Jean Wilkinson, Assistant Attorney General